

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600

www.montgomerycountymd.gov/content/council/boa/board.asp

CASE NO. S-2666

PETITION OF ORLANDO MARTINEZ AND MARTHA GAITAN

OPINION OF THE BOARD

(Opinion Adopted January 24, 2007)
(Effective Date of Opinion March 23, 2007)

Case No. S-2666 is an application for a special exception, pursuant to Section 59-G-2.00 of the Montgomery County Code, to permit an accessory apartment. The Hearing Examiner for Montgomery County held a hearing on the application on April 3, 2006, closed the record in the case on June 8, 2006, and on June 13, 2006, issued a Report and Recommendation for approval of the special exception.

The subject property is Lot 48, Block 13, Bel Pre Woods Subdivision, at 14427 Brad Drive in the R-90 Zone.

The Board of Appeals first considered the Hearing Examiner's Report at its Worksession on June 28, 2006. The Report contains the following proposed condition:

“Before the special exception may take effect, Petitioners must submit a revised site plan/landscaping and lighting plan that shows in addition to the features shown on Exhibit 22, a solid wood fence along the western property line, from the rear property line to a point approximately one quarter of the way from the northwest corner of the house to the front property line. The fence shall be solid wood, 6½ feet high, with vertical boards flush against one another and the ground, and shall be installed by a licensed contractor.”

Effective September 7, 2006, the Board issued a Resolution to defer its action on the application, pending receipt of the revised landscape and lighting plan required in the condition. On January 11, 2007, the Board received a letter from Martha Gaitan, which enclosed a revised Landscape and Lighting Plan, which shows the required, solid wood, 6½-foot high fence. At its Worksession on January 24,

2007, the Board re-opened the record in the case to receive the Landscape and Lighting Plan as Exhibit No. 30(a).

Decision of the Board: Special Exception **Granted**, Subject to
Conditions Enumerated Below.

The subject property is Lot 48, Block 13, Bel Pre Woods Subdivision, at 14427 Brad Drive in the R-90 Zone.

The Board of Appeals again considered the Hearing Examiner's Report, together with the revised Landscape and Lighting Plan, at its worksession on January 24, 2007. After careful consideration, and review of the record in the case the Board adopts the Report and Recommendation, and grants the special exception subject to the following conditions:

1. Petitioners are bound by their testimony and exhibits of record, to the extent that such testimony and evidence are identified in the Hearing Examiner's Report and Recommendation and in this Opinion.
2. The accessory apartment may be inhabited by no more than two unrelated persons, or a family of no more than six persons.
3. Tenants residing in the accessory apartment must be limited to a total of no more than two vehicles.
4. Prior to the issuance of an accessory apartment license by the Department of Housing and Community Affairs, Petitioners must comply with the requirements of DHCA's preliminary housing inspection, which are outlined on page 11 and in Exhibit 13, except that if Petitioners choose to install aluminum siding on the house, they will not be required to paint those portions of the house that will be covered by siding.
5. Per Code § 59-G-2.00(b)(1), Petitioners must occupy one of the dwelling units on the subject property.
6. Per Code § 59-G-2.00(b)(3), Petitioners must not receive compensation for more than one dwelling unit on the subject property.
7. Petitioners may expand the width of the driveway entrance so that the entire driveway is the same length, as shown on Exhibit No. 22 and on Exhibit No. 30(a), provided that they obtain all necessary permits in advance.

8. Petitioners must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to implement the special exception as granted herein. Petitioners shall at all times ensure that the special exception use and facility comply with all applicable codes, regulations, directives and other governmental requirements.

On a motion by Donna L. Barron, seconded by Wendell M. Holloway, with Caryn L. Hines, Catherine G. Titus, and Allison Ishihara Fultz, Chair in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.

Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 23rd day of March, 2007.

Katherine Freeman
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure.